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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,233	08/03/2006	Michel Abittan	ABAL5001	1829
29889	7590	05/15/2007	EXAMINER	
OLIVE & OLIVE, P.A. 500 MEMORIAL STREET PO BOX 2049 DURHAM, NC 27702			REESE, DAVID C	
			ART UNIT	PAPER NUMBER
			3677	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/581,233

Applicant(s)

ABITTAN, MICHEL

Examiner

David C. Reese

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

- Claims 1-9 are pending.

Drawings

[1] The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, varying subject matter (different embodiments) from the instant set of claims including that of different numbers of facets per surface area of a polished gemstone as well as said facets extending under different angles must be shown by their own respective drawings or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

Art Unit: 3677

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

[2] Claims 2 and 4 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In the instant case, claim 2 merely attempts to claim differing numbers of the number of facets for the polished stone instead of further limiting the structure of that from claim 1. In addition, with respect to claim 4, stating that the angle between adjacent facets is between .25-1 contradicts and fails to further limit the structure of that claimed in claim 3 (that the angle between facets is between .1-5).

Further, with respect to claim 2, it is improper (indefinite) to use the term “preferably” as one has not properly delineated which number of facets the applicant wishes to claim.

[3] Claims 1-9 objected to because of the following informalities: “characterised” should be “characterized”. Appropriate correction is required.

Claim Rejections - 35 USC § 103

[4] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[5] Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schenck US-D35,937.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

As for Claims 1-4, Schenck discloses of a gemstone having a surface at least part of which is polished, characterized in that the polished surface comprises a plurality of adjacent facets.

The difference between the claim and Schenck is that Schenck does not expressly state of the exact number of facets per mm of surface of the polished gemstone, as well as the exact angle by which the adjacent facets extend with respect to one another. It would have been an obvious matter of design choice to modify the polished surface of Schenck to have the claimed number and angle of respective facets, since applicant has not disclosed that such a particular orientation creates any unexpected result. It appears that the invention would perform equally well as the invention disclosed by Schenck. It is extremely old, well known, readily apparent and profoundly obvious to change the size, shape, orientation, angles, percentages, and create ranges for facets and the gemstone in its entirety as to merely alter the aesthetics of said gemstone for the corresponding and resulting properties including brilliance, radiance, etc. for the utility of mere user preference. It is also extremely well known that altering said features will produce different properties radiating from said gemstone, depending on the changes and alterations made. Therein, once again, lies the pertinence behind such, as no unexpected result,

Art Unit: 3677

viewed by one skilled in the art; will occur, with any of the above possible changes or alterations to any given gemstone.

Re: Claim 5, Schenck discloses characterized in that the facets are applied along the surface of the stone.

Re: Claim 6, Schenck discloses characterized in that the facets have a geometrical shape which may be regular or irregular.

Re: Claim 7, Schenck discloses characterized in that the facets have virtually the same or different shapes.

Re: Claim 8, Schenck discloses characterized in that the gemstone has a contour and in that the facets follow the contour of the stone.

Re: Claim 9, Schenck discloses characterized in that the gemstone is selected from the group of precious or semi-precious stones.

Art Unit: 3677

Conclusion

[6] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited further to show the state of the art with respect to this particular type of gemstone; as well as their extreme relevance to the current application as many read extensively onto the claimed invention: please see submitted notice of reference cited.

[7] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Reese
Assistant Examiner
Art Unit 3677

DCR


9/25/07


ROBERT J. SANDY
PRIMARY EXAMINER